THE HIGH COURT OF BOMBAY AT GOA

FIRST APPEAL NO.165 OF 2001

National Insurance Co. Ltd.,
Subraya Chambers, 1st Floor,
Francisco Luis Gomes Road,
Vasco-Goa. .... Appellant.

Vs.

1. Kashinath Bala Gawas,
Modlo Wado Siridao,
Ilhas, Goa.

2. Dinesh Kumar,
House No.661-10,
Shantinagar, Ponda-Goa.

3. Laldhar G. Sharma,
Parag Housing Co-operative Society,
Shantinagar, Ponda, Goa. ..... Respondents.

Mr. E. Afonso, Advocate for the appellant.

Mr. J. Godinho, Advocate for the respondent No.1.

CORAM : F.I. REBELLO, J.

DATE : JULY 11, 2003.

ORAL JUDGEMENT :

The limited issue raised in this appeal by the Insurance Company is that on the date of the accident the vehicle owned by respondent No.2 was not insured with the appellant. This plea was raised before the learned Motor Accident Claims Tribunal. The learned Claims Tribunal, without considering the issue, proceeded to award the amount under Section 140 of the M.V. Act against the respondents before it who are the

appellant and respondents No.2 and 3 before this Court, jointly and severally. To fasten the liability of the appellant, prima facie, there must be some material before the learned Claims Tribunal to show that at the relevant time the vehicle was insured with insurance company- respondent No.3. That is not the position.

In the light of that the order dated 7.12.2000 stands modified and the liability of the appellant is, set aside. The amount deposited by the appellant before this Court be returned to to the appellant alongwith the accrued interest thereon, if any.

2. It is, however, made clear that it will be open to the applicant to establish that at the relevant time respondent No.3 had an insurance policy. Order under Section 140 passed by this Court today will not preclude the respondent No.1, the applicant before the Claims Tribunal from so proving and/or respondent No.3 owner of the vehicle from producing the insurance policy. Order accordingly.

F.I. REBELLO, J.

ssm.